UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHEILA SELLERS, MARQUITA WEBB,
ATHANASIA ANTONOPOLO, DOROTHY MELLIN,
STEPHANIE GALINSKI, RANA CREWS, and R. GREG PERRY

Appeal 2007-0772
Application 09/788,132[1]
Technology Center 3600

Decided: October 31, 2007

Before HUBERT C. LORIN, ANTON W. FETTING, and DAVID B. WALKER, *Administrative Patent Judges*.

WALKER, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] This application claims the benefit of U.S. Provisional Application Serial Number 60/193,546 filed March 31, 2000. The real party in interest is Genworth Mortgage Holdings, LLC of Raleigh, North Carolina.

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-13. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We affirm.

THE INVENTION

Appellants claim systems and methods for automatically obtaining loss mitigation loan workout decisions (Specification 1:7-9). Claims 1 and 4, reproduced below, are representative of the subject matter on appeal.

> 1. A system for automatically obtaining loss mitigation loan workout decisions, comprising:
>
> a network of personal computers connected into a network administered by a central server computer,
>
> each personal computer in the network including a network interface for transmitting borrower inputs to, and receiving outputs from, the server computer,
>
> each personal computer in the network further including display screens for receiving inputs from, and providing outputs to, a financially troubled borrower, including inputs and outputs relating to a proposed loss mitigation loan workout,
>
> the central server computer having a central processing unit that runs automatic workout decision analysis software, wherein the analysis software analyzes information relating to a preexisting loan whose terms are not being met by the financially troubled borrower and other information relating to why the troubled borrower is financially troubled to determine whether to automatically approve the proposed loss mitigation loan workout,

> the central server computer transmitting to the financially troubled borrower, automatically over the network, automatic approval of the proposed loss mitigation loan workout if certain predefined parameters are met and, if the predefined parameters are not met, providing further instructions to the financially troubled borrower.
>
> 4. The system of claim 1, wherein a user selects a loss mitigation loan workout type among a menu of predefined loss mitigation loan workout types.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Dhar	US 2002/0040339 A1	Apr. 4, 2002
Fletcher	US 6,112,190	Aug. 29, 2000

T.A. Myers & Co., Real Estate Problem Loans: Workout Strategies and Procedures, 5-30 (Dow Jones-Irwin, 1990).

Larry B. Litton, *The Return of Loss Mitigation*, Mortgage Banking, vol. 57, iss. 8, 60-65 (Washington, DC, May 1997).

The following rejections are before us for review.

1. Claims 1-3, 5-8, 10, and 11 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Dhar in view of Myers and further in view of Litton.
2. Claims 4, 9, 12, and 13 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Dhar in view of Myers, Litton, and Fletcher.

ISSUE

The issue before us is whether Appellants have shown that the Examiner erred in rejecting (1) claims 1-3, 5-8, 10, and 11 as unpatentable over Dhar in view of Myers and further in view of Litton; (2) claims 4, 9, 12, and 13 as unpatentable over Dhar in view of Myers, Litton, and Fletcher. The issue turns on whether the cited references are properly combined to show the automation of known processes to make automatic loan workout decisions.

Rather than repeat the arguments of Appellants and the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

FINDINGS OF FACT

We find the following enumerated findings to be supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427, 7 USPQ2d 1152, 1156 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Dahr states that

> Technology has changed the landscape of the financial services industry such that agents play an increasingly shrinking role in marketing the financial products to consumers. As the Internet has grown in popularity,

consumers shop for financial services over the Internet without the aid of an agent . . . A growing number of online companies also provide loan services; however, these online companies currently fall short of fully automating the loan process.

(Dhar, p. 1, para. 4 - 5).

2. Myers provides workout strategies and procedures for managing problem loans. (Myers, pp. 5 - 30).

3. Litton teaches

Recognizing the lack of available technology to support loss-mitigation efforts, in 1995 Litton began developing proprietary software, RADAR, and implemented it in 1996. The system automates the process and prepares a complete financial analysis based on given assumptions

. . . .

. . . . The system interfaces with data sources that provide current property values so that calculations will consider the most likely sales price and marketing time should the property go to foreclosure and become owned real estate. The system also interfaces with credit bureaus, property inspection companies and title information sources."

(Litton, p. 5).

4. Litton also discloses that

[u]nfortunately, while the new technology has started to appear to help servicers in delinquency management and loss mitigation, it has been slow to develop. Although sophisticated technology has quickly taken hold in the loan origination side of the business, the sophisticated technology required to make default decisions has not effectively been packaged and put to use in most servicing operations today. . . What is needed to adequately service a mortgage from a loss perspective is an automated system.

(Litton, p. 3).

5. Fletcher teaches a pulldown menu for selecting a type of loan analysis (Fletcher, Fig. 14).

PRINCIPLES OF LAW

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of ordinary skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). *See also KSR*, 127 S.Ct. at 1734, 82 USPQ2d at 1391 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

ANALYSIS

A. Rejection of claims 1-3, 5-8, 10, and 11 under 35 U.S.C. § 103(a) as unpatentable over Dhar in view of Myers and further in view of Litton.

Appellants argue claims 1, 6, and 11, the three independent claims, as a group. They do not argue claims 2-3, 5, 7-8, and 10 separately, so all of the claims in this group stand or fall with representative claim 1.

There is no dispute that Dhar discloses all of the elements of claim 1, but for:

> [1)] inputs from and outputs to, a financially troubled borrower, including inputs and outputs relating to a proposed loss mitigation workout;
>
> [2)] automatic loan workout decision analysis software wherein the analysis software analyzes information relating to a preexisting loan whose terms are not being met by the financially troubled borrower and other information relating to why the troubled borrower is financially troubled to determine whether to automatically approve the proposed loss mitigation loan workout; and
>
> [3)] automatic approval of the proposed loss mitigation loan workout.

(Answer 6-7).

Appellants instead argue that Myers and Litton, which the Examiner relies on to supply the above limitations (Answer 7-8), do not cure the deficiencies of Dahr noted by the Examiner (Br. 6). In particular, Appellants argue that:

> Dhar, Myers, and Litton, take [sic, taken] separately or in combination, do not teach and do not suggest analysis software which analyzes both "information relating to a preexisting loan whose terms are not being met by the financially troubled borrower and other information relating to why the troubled borrower is financially troubled to determine whether to automatically approve the proposed loss mitigation loan workout," as claimed by claim 1.

(Br. 9).

The Examiner relies upon Myers for: 1) inputs from and outputs to, a financially troubled borrower, including inputs and outputs relating to a proposed loan workout; 2) loan workout decision analysis wherein the analysis analyzes information relating to a preexisting loan whose terms are not being met by the financially troubled borrower and other information relating to why the troubled borrower is financially troubled to determine whether to approve the proposed loan workout; and 3) approval of the proposed loan workout (Answer 7). The Examiner further relies on Litton for: 1) inputs from and outputs to, a financially troubled borrower, including inputs and outputs relating to a proposed loss mitigation workout; 2) automatic loan workout decision analysis software wherein the analysis software analyzes information relating to a preexisting loan whose terms are not being met by the financially troubled borrower and other information relating to why the troubled borrower is financially troubled to determine whether to approve the proposed loss mitigation workout; and 3) approval of the proposed loss mitigation workout (Answer 7-8). We find no error in the Examiner's characterization of the references and what they teach (Findings of Fact 2-3).

Appellants argue that the cited references do not suggest and, if anything teach away from, the claimed invention (Br. 13-15). However, the teaching away argument is nothing more than a conclusory statement without any citation to any portion of the references for a specific teaching away. To the extent the Appellants argue in their pre-KSR Brief that there is no explicit teaching, suggestion, or motivation to combine Bahr, Myers, and Litton, that argument is foreclosed by

KSR. *KSR*, 127 S.Ct. at 1740-41, 82 USPQ2d at 1396 ("[T]he analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.")

In addition, the Examiner found that it would have been obvious to automate the known processes for loan workout decisions disclosed in Myers, relying first on the suggestions of the references themselves and second on *In re Venner*, 120 USPQ 192 (Answer 8-9). With respect to the references and in response to Appellants' arguments, the Examiner stated:

> As Dahr states "Technology has changed the landscape of the financial services industry such that agents play an increasingly shrinking role in marketing the financial products to consumers. As the Internet has grown in popularity, consumers shop for financial services over the Internet without the aid of an agent . . . A growing number of online companies also provide loan services; however, these online companies currently fall short of fully automating the loan process." (see Dhar, p. 1, para. 4 - 5).
>
> And Litton states "Unfortunately, while the new technology has started to appear to help servicers in delinquency management and loss mitigation, it has been slow to develop. Although sophisticated technology has quickly taken hold in the loan origination side of the business, the sophisticated technology required to make default decisions has not effectively been packaged and put to use in most servicing operations today. . .What is needed to adequately service a mortgage from a loss perspective is an automated system. . . ." (see Litton).

(Answer 16-17; see also the Final Rejection, pp. 11-14 for similar statements).

Moreover, each of the elements of Dhar, Myers, and Litton combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. *See Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282, 189 USPQ 449, 453 (1976). Therefore, the claimed subject matter likely would have been obvious under *KSR*. *KSR,* 127 S.Ct. at 1739, 82 USPQ2d at 1395. In addition, neither Appellants' Specification nor Appellants' arguments present convincing evidence that automating the known processes for loan workout decisions disclosed in Myers as suggested by the Examiner is uniquely challenging or difficult for one of ordinary skill in the art. Under those circumstances and in light of the explicit teachings cited by the Examiner, Appellants have not shown that the Examiner erred in concluding that

> It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Dhar by incorporating the established loan workout analysis, as disclosed by Myers, and the loss mitigation analysis, as disclosed by Litton, into the automated loan decision analysis software and workflow (decision) engine, as disclosed by Dhar, to provide a faster and automated system through which to run loss mitigation workouts, and, as disclosed by Dhar, [to] produce an automatic decision.

(Answer 8).

B. Rejection of claims 4, 9, 12, and 13 under 35 U.S.C. § 103(a) as unpatentable over Dhar in view of Myers, Litton, and Fletcher.

Appellants argue these claims as a group, and we look to representative claim 4. Appellants repeat the arguments made against the previous rejection, which are equally unpersuasive here. Moreover, Fletcher teaches a pulldown menu for selecting a type of loan analysis (Finding of Fact 5). Appellants have not shown that the Examiner erred in concluding that

> It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the automated loss mitigation loan workout system, as disclosed by Dhar, Myers and Litton, in combination, to provide a menu of predefined analysis types for selection among, as disclosed by Fletcher, to utilize a common and standard software feature to create an easier to utilize graphic user interface.

(Answer 10).

CONCLUSIONS

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1-13 under 35 U.S.C. § 103(a).

DECISION

The decision of the Examiner to reject claims 1-13 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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